



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 26, 1996

Ms. Christine T. Rodriguez
Staff Attorney
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR96-2261

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37910.

The Texas Department of Insurance (the "department") received an open records request for the application by the South Plains District Dental Society (the "dental society") for a multiple employee welfare arrangement ("MEWA"). You state that some of the requested information will be released. You contend, however, that other portions of the application are made confidential by article 3.95-2 of the Insurance Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code.¹

Article 3.95-2 of the Insurance Code provides in pertinent part:

(h) A multiple employer welfare arrangement *possessing an initial certificate of authority* [to establish or maintain a MEWA] must apply for a final certificate of authority no later than one year after issuance of its initial certificate of authority. The [MEWA] shall file an application on a form prescribed by the commissioner and furnish such information as may be required by the commissioner. The application shall include only:

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

- (1) the names and addresses of:

....

(C) if not an association, at least five employers, *which information shall be retained by the commissioner as confidential*;

- (2) evidence that the bonding requirements have been met;

(3) copies of all plan documents and agreements with service providers, *which shall be retained by the commissioner as confidential*; and

- (4) a funding report containing:

(A) a statement certified by the board of trustees or directors, as applicable, and an actuarial opinion that all applicable requirements of Article 3.95-8 of this code have been met;

(B) an actuarial opinion which sets forth a description of the extent to which contributions or premium rates:

(i) are not excessive;

(ii) are not unfairly discriminatory; and

(iii) are adequate to provide for the payment of all obligations and the maintenance of required cash reserves and surplus by the [MEWA];

(C) a statement of the current value of the assets and liabilities accumulated by the [MEWA] and a projection of the assets, liabilities, income, and expenses of the [MEWA] for the next 12-month period; and

(D) a statement of the costs of coverage to be charged, including an itemization of amounts for administration, reserves, and other expenses associated with operation of the [MEWA].

Article 3.95-2(h) makes two categories of information confidential: (1) the names and addresses of employers participating in the MEWA and (2) "all plan documents and agreements with service providers." These are the only types of documents you have submitted to this office for review and we therefore assume that the department has released to the requestor all of the remaining types of documents required to be submitted in connection with the dental society's application for a final certificate of authority.² Because these materials are specifically made confidential under article 3.95-2(h), we agree that the department must withhold these documents pursuant to section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please *contact our office*.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", written over a horizontal line.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/RWP/rho

Ref.: ID# 37910

Enclosures: Submitted documents

cc: Ms. Julianne Boone
Legal Assistant
DeLeon and Boggins
221 West 6th Street, Suite 1050
Austin, Texas 78701
(w/o enclosures)

²For purposes of this ruling, this office assumes that the documents you have submitted to this office in fact were submitted to the department for purposes of obtaining a final certificate of authority under subsection (h), and not for obtaining an initial certificate of authority under subsection (b), which contains no similar confidentiality provisions.